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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO.       |
|---|-------------|----------------------|--------------------------------|------------------------|
| 10/510,039  | 04/13/2005  | Erich Fuderer        | 566/42762                      | 4659                   |
| 23646 7590 07/03/2007<br>BARNES & THORNBURG LLP<br>750-17TH STREET NW<br>SUITE 900<br>WASHINGTON, DC 20006-4675 |             |                      | EXAMINER<br>NGUYEN, XUAN LAN T |                        |
|   |             |                      | ART UNIT<br>3683               | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>07/03/2007        | DELIVERY MODE<br>PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/510,039

Applicant(s)

FUDERER ET AL.

Examiner

Lan Nguyen

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9 and 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>drawings</u> .                         |

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the gearings and slip clutch of the emergency release device and the gearings and clutch of the wear adjuster as described in the specification. Details drawings of these components are needed; since presently, the details are small and hard to distinguish from surrounding components. Because of the deficiencies, it is hard to understand the detailed structures of the instant invention as described and claimed. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are

not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are further objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features in claims 8 and 9 must be clearly shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note the objection above. The elements in the emergency release device and the wear adjuster are small and hard to distinguish.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. The drawings were received on 4/3/07. These drawings are not approved. Figures 1 and 2 are not approved because they are of poorer quality than figures 1 and 2, which are already in the file. Figure 3 is not approved because of hand written notes and there is no clear showing of contrate gearing 80 and 82. Figure 4 is not approved because of hand written notes and there is no clear showing of balls 40 and clutch 38. Furthermore, figures 3 and 4 are not exploded views. They are simply enlargements of figures 1 and 2. Because of these reason, the drawing objections are repeated above.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Note the drawing objections above. The claimed subject matter in claims 8 and 9 was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 8 and 9 are not further treated.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4-7, 11-13 and 14-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 4 and 7 recite “a second electric drive unit” without a reference to a first.
- In claim 6, the passage starts with “if” is considered to be not positively claiming and is indefinite. Since claim 6 is indefinite that a determination of the claiming subject matter is not possible, claim 6 and its dependent claims are not further treated in the prior art rejection.
- Claims 11-13 depend on cancelled claim 10.
- Claim 14 is confusing. Claim 14 employs unduly broad language, which makes it difficult to understand and to determine the boundary of the claimed subject matter. Since claim 14 is indefinite that a determination of the claiming subject matter is not possible, claim 14 and its dependent claims are not further treated in the prior art rejection.
- Claim 20 is confusing. Also, “the stop” lacks antecedent basis.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Kerscher et al. (USP 4,234,062).

Re: claim 23, Kerscher et al. shows a brake application system for vehicles, particularly rail vehicles, as in the present invention, including: a combined device 39 for an emergency release of the brake and for an auxiliary release of the brake; and the combined device is electrically actuated by an electric common drive unit, as stated in column 3, lines 49-51. Kerscher shows in figure 2 the emergency release to be a release of the brake that is a braking power reduction of the braking application system being acted upon by a braking power. Kerscher shows in figure 3 the auxiliary release being a release of the brake that is not being acted upon by a braking power.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerscher et al. (USP 4,234,062) in view of Wolfsteiner et al. (USP 6,722,477) and further in view of Fuderer et al. (EP 699846 A2).

Kescher's brake application system, as rejected in claim 23, shows a slack adjuster 29 but is silent of the internal structure of the slack adjust 29. Kerscher also lacks the integration of the emergency release device in the slack adjuster as required

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by claim 2. Wolfsteiner et al. teach the concept of integrating an emergency release in a slack adjuster 128 in column 5, lines 43-45 as a desirable design in a compact brake system. Fuderer et al. teach the internal structure of a well-known plunger rod adjuster as claimed in claims 2-5. The adjuster comprises a threaded spindle 33 for a screw connection with a nut 34 and a first free wheel 38 and a second free wheel 43 to be actuated by a rotary drive as stated in the Abstract. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kerscher brake application system to combine the teaching of Wolfsteiner to integrate the emergency release in the slack adjuster to provide a compact design as taught by Wolfsteiner while using a well known plunger rod adjuster of the structures as taught by Fuderer since Fuderer adjuster is well known and readily available for use in a brake system.

### ***Response to Arguments***

12. Applicant's arguments filed 4/3/07 have been fully considered.

Applicant's amendments have overcome some 112, 2<sup>nd</sup> paragraph rejections and introduced some new 112, 2<sup>nd</sup> paragraph rejections, as stated above.

Upon further consideration, Applicant's amendment to claim 23 is deemed to not overcome the rejection based on Kerscher. As stated above, figure 3 of Kerscher shows the brake pad 23 being released while not being acted upon by a braking power; while in figure 2, Kerscher shows the brake pad 23 being released while being acted



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upon by a braking power. Therefore, Kerscher's brake system still meets the claimed features of claim 23.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is (571) 272-7121. The examiner can normally be reached on Monday through Friday, 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Xuan Lan Nguyen/ 6-19-07  
Primary Examiner  
Art Unit 3683

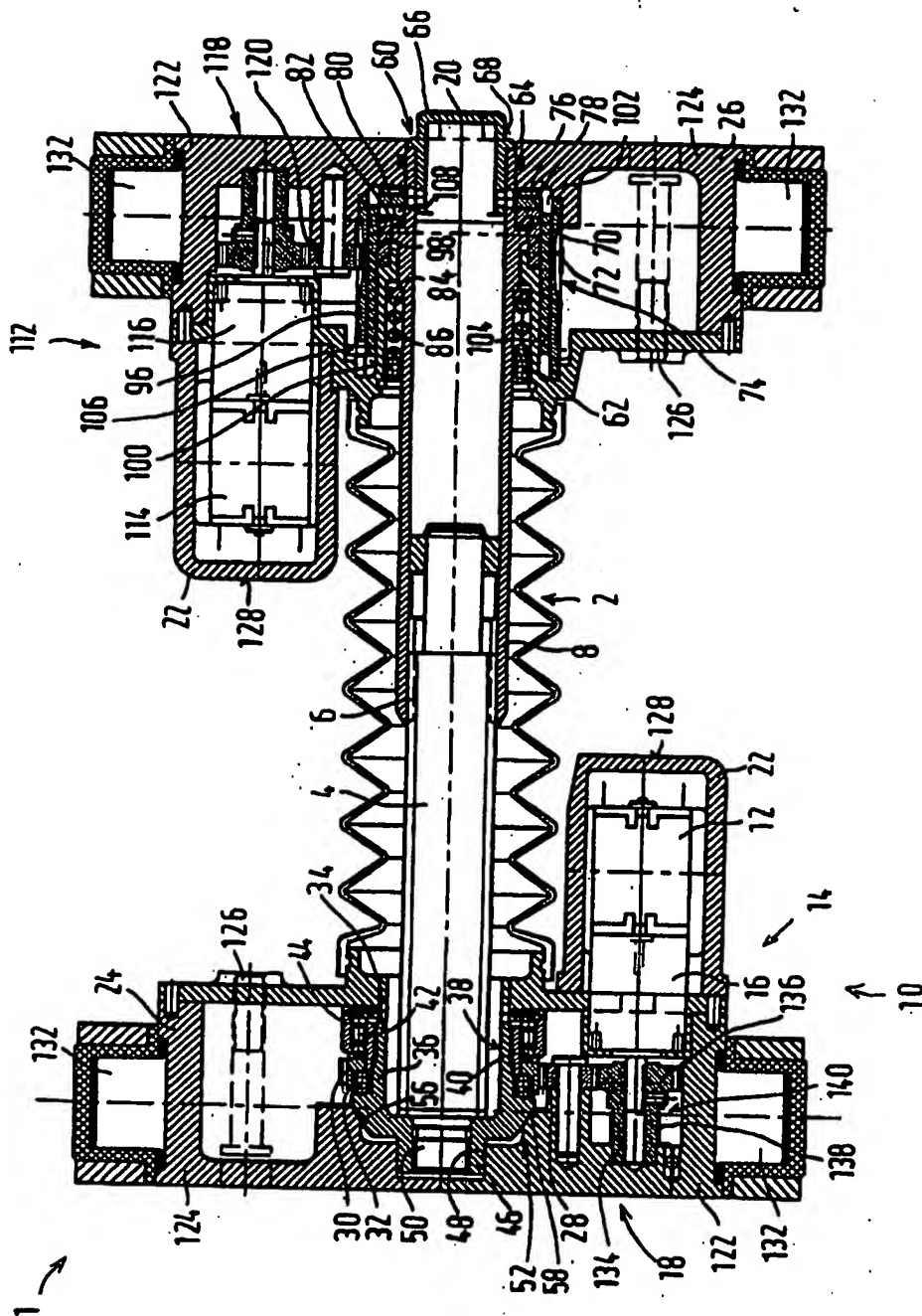
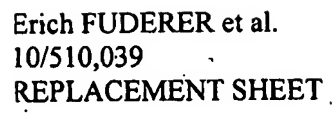


FIG. 1

NOT approved  
xw  
5/24/07



NOT approved  
5/24/07  
XLN



Erich FUDERER et al.  
10/510,039  
NEW SHEET

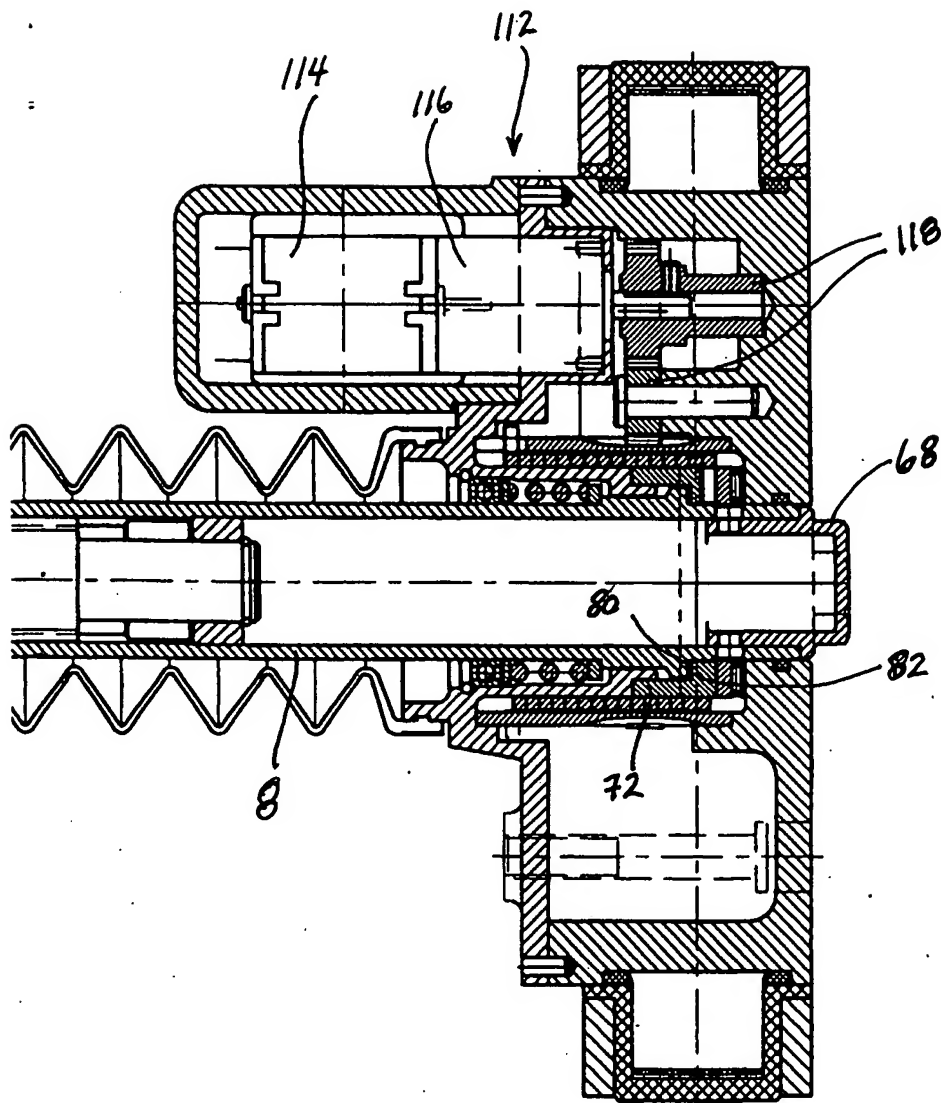
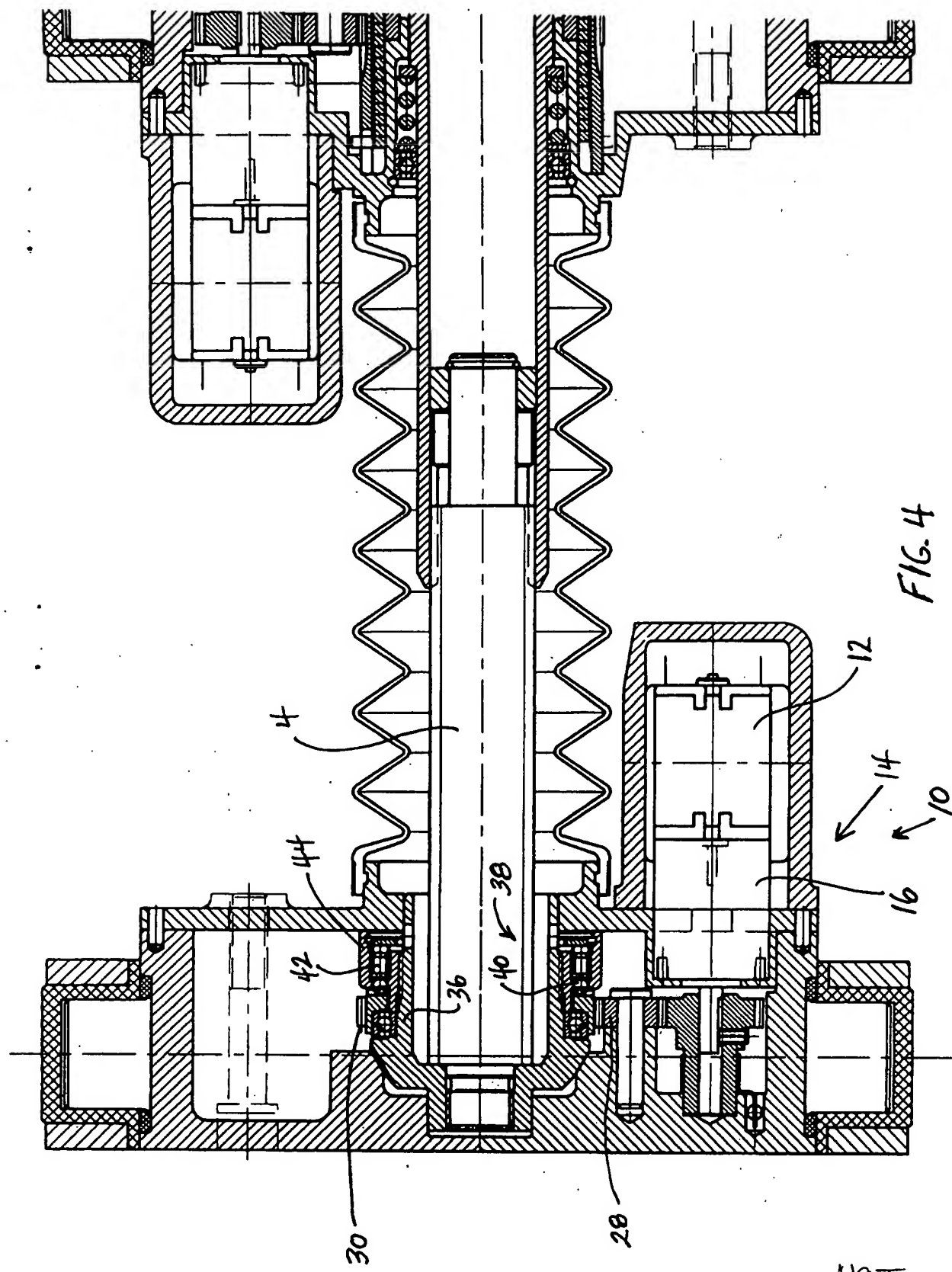


FIG. 3

NOT approved  
XLN  
5/24/07

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Erich FUDERER et al.  
10/510,039  
NEW SHEET



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